



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pulse Electronics, Inc.

File: B-240105

Date: October 17, 1990

Edward C. DeSaussure for the protester.
William R. Medsger, Esq., and Dennis Cohen, Esq., Department
of the Army, for the agency.
Catherine M. Evans and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Protest that required item does not meet Federal Acquisition
Regulation (FAR) definition of "complex" item and therefore
does not warrant imposition of high-level quality control
requirement is denied where agency reasonably determined
that item's quality characteristics are consistent with FAR
definition, and that high-level quality control is necessary
to meet its minimum needs.

DECISION

Pulse Electronics, Inc. protests the terms of request for
proposals (RFP) No. DAAA09-90-R-0540, issued by the U.S.
Army Armament, Munitions and Chemical Command (AMCCOM) for
45 tank commander panel assemblies for the M1A1 battle tank.
Pulse contends that the RFP's quality requirement was
contrary to regulation, and that it exceeds the agency's
minimum needs and therefore unduly restricts competition.

We deny the protest.

The solicitation provides that offerors shall comply with
the quality program requirements of military specification
MIL-Q-9858A, a military quality program which may be imposed
upon the contractor if the required item is both complex and
critical as defined by Federal Acquisition Regulation (FAR)
§ 46.203. Pulse alleges that the tank commander panels are
not sufficiently complex, as defined by FAR § 46.203(b), to
warrant application of this higher-level quality require-
ment, and that the agency was instead required to include

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the less restrictive inspection system requirements of MIL-I-45208A.^{1/} The agency responds that the tank commander panel is both complex and critical, and that the RFP requirement for compliance with MIL-Q-9858A therefore was proper.^{2/} We agree with the agency.

The determination of the government's minimum needs and the best methods of accommodating them is primarily the responsibility of the contracting agency since agency officials are most familiar with the conditions under which the supplies or services will be used. Thus, we will not question an agency's determination of its minimum needs unless there is a clear showing that the determination had no reasonable basis. East West Research, Inc., B-238316, Apr. 18, 1990, 90-1 CPD ¶ 400.

FAR § 46.203(b) defines complex items as follows:

"Complex items have quality characteristics, not wholly visible in the end item, for which contractual conformance must be established progressively through precise measurements, tests, and controls applied during purchasing, manufacturing, performance, assembly, and functional operation either as an individual item or in conjunction with other items."

The agency notes that the tank commander panel is an environmentally sealed (i.e., glued shut) unit that provides the electrical circuitry, controls and indicators for a variety of M1A1 tank functions, including manual operation of the tank's turret and auxiliary hydraulic power; manual operation of the tank's nuclear, biological and chemical (NBC) protective subsystem; and manual input of range battle sight data. In addition, the panel provides visual and audible warnings that alert the crew to the presence of a chemical or nuclear threat, and automatically invokes the

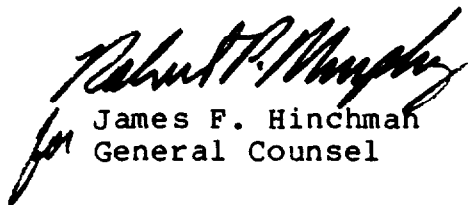
^{1/} Pulse also alleged in its protest that MIL-Q-9858A does not apply because the tank commander panel is not a critical item as defined by FAR § 46.203(c), but did not maintain this argument in its comments on the agency report. We therefore will not consider it further. See Universal Hydraulics, Inc., B-235006, June 21, 1989, 89-1 CPD ¶ 585.

^{2/} The agency argues that Pulse is not an interested party to protest the terms of the solicitation because it did not submit a proposal. To the contrary, Pulse is an interested party to the extent that it claims that the allegedly restrictive specifications prevented it from competing.

NBC protective subsystem upon detection of such a threat. The panel also regulates and detects other environmental conditions within the tank such as air temperature, fire control, and battery charge. The agency explains that, in view of the criticality of these functions, a number of inspections and tests must be performed before the unit is sealed in order to assure contractual conformance of the units, including inspection of solder joints and verification of the electrical characteristics of individual electronic components. In addition, the RFP contains a requirement, pursuant to MIL-Q-9858A for a "Soldering Process Control Plan," that the contractor describe its procedure for quality control in the soldering process; the stated purpose of this requirement is to assure compliance with criteria for high reliability soldering.

In view of the sophisticated and critical functions of the tank commander panel that are not visible in the end item (i.e., after the back panel is glued onto the unit), and the inspections and controls that must be performed prior to the sealing of the units to assure the reliability of those functions, we think AMCCOM reasonably determined that the tank commander panel meets the FAR definition of a complex item and therefore justified inclusion of the MIL-Q-9858A quality standard as necessary to support the agency's minimum needs. While Pulse asserts that the requirements of MIL-Q-9858A are expensive to implement and will limit competition to larger firms, this possibility does not establish that an otherwise justifiable requirement is unreasonable. Moreover, Pulse's speculation appears to be unfounded; seven offers submitted proposals, four of which certified themselves as small businesses, and the agency explains that government assistance is available to contractors who wish to establish a MIL-Q-9858A program.

The protest is denied.


for James F. Hinchman
General Counsel